

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:NER:BRK:TL-N-1591-98
HNAdams

date: November 23, 1999

to: District Director, Connecticut-Rhode Island District
Attn: Kenneth Rittner, Assistant Issue Specialist - Leasing

from: District Counsel, Brooklyn

subject: Request for Advice - Summoning United States Citizen Residing in
the United Kingdom

UIL: 7602.05-00

This memorandum responds to your October 6, 1999 request for advice on whether the examination division could obtain information from a United States citizen who resides in the United Kingdom by summoning the individual.

DISCLOSURE STATEMENT

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BACKGROUND

The examination division believes that [REDACTED], a United States citizen who resides in the United Kingdom, has knowledge of facts relevant to the proper tax treatment of a lease stripping transaction.¹ [REDACTED] is, and was when the

The Service described lease stripping transaction in Notice 95-53, 1995-44 I.R.B. 21 (October 13, 1995) and announced that its position is that lease stripping transactions improperly separate income from related deductions and generally do not

[REDACTED]

transaction took place, an attorney with the London office of [REDACTED]. He advised [REDACTED], a [REDACTED] Limited Life Company that participated in the lease stripping transaction.² [REDACTED] had three members at the time of the transaction, all of whom are British citizens and residents.³ The examination division does not know whether [REDACTED] engages in business in the United States.

The examination division, with the assistance of the Service's Revenue Service Representative (RSR) in the United Kingdom, has arranged to obtain information and documents from [REDACTED] through the British tax authorities. You question whether the examination division might also obtain information by summoning [REDACTED] in the United Kingdom.

CONCLUSION

The examination division should not attempt to obtain information from [REDACTED] by summoning him in the United Kingdom. If it is impossible to summons [REDACTED] in the United States, the examination division should pursue the information sought from him through other means, such as making third party telephone or written contact with him directly or through the Service's RSR in the United Kingdom, by summoning the information from the Philadelphia office of [REDACTED], or by seeking the information from other parties to the transaction.

produce the tax consequences desired by the parties.

As [REDACTED]'s office was in London and all the members of [REDACTED] were British citizens and residents, it appears that [REDACTED] advised [REDACTED] from London.

The three members were [REDACTED], [REDACTED], and [REDACTED]. [REDACTED] is married to [REDACTED].

The examination division should ensure that its third party contacts are made in compliance with section 3417 of the IRS Restructuring and Reform Act of 1998.

[REDACTED]

DISCUSSION

Code section 7602(a)(2) authorizes the Service to summons persons to appear and produce records or give testimony. Code section 7604 gives "the United States district court for the district in which such person resides or is found * * * jurisdiction by appropriate process to compel" compliance with a summons.

Code section 7602(a)(2) does not explicitly limit the Service's authority to summons persons to the confines of the United States. However, summoning parties outside of the United States would potentially raise serious concerns such as whether sending an agent of the United States government to serve such a summons would be viewed by the country in which it is served as an infringement on that country's sovereignty.⁵

Moreover, it does not appear that the Service could enforce such a summons. As was recited above, the United States district court in which [REDACTED] "resides or is found" would have jurisdiction to compel compliance. A resident of the United Kingdom does not "reside" within the jurisdiction of a United States district court. Cf. United States v. Toyota Motor Corp., 561 F. Supp. 354, 357 (C.D. Cal. 1983) (stating that parties agreed that Japanese corporation did not reside in the United States). Similarly, unless [REDACTED] travels to the United States so that he can be summonsed within the jurisdiction of a United States district court, it does not appear that he could be considered to be "found" in the United States.⁶ See United States v. Toyota Motor Corp., supra at 357-60 (discussing when a taxpayer is found within a district). As a result, it does not appear that any United States district court would have jurisdiction to issue an order compelling [REDACTED] to comply with a summons. See Smith v. United States, 592 F. Supp. 753, 755 (D. Conn. 1984) (holding that United States district court could not enforce summons issued to person out of the district).

The article of the United States/United Kingdom income tax treaty that provides for the exchange of information and administrative assistance does not provide for the service of IRS summonses in the United Kingdom. See Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, Dec. 31, 1975, U.S.-U.K., art. 26.

We understand that you are not aware of any plans by [REDACTED] to travel to the United States.

[REDACTED]

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Alternatively, as [REDACTED] is an attorney with the London office of [REDACTED], it might be possible to obtain the documents sought from him by summoning that firm's Philadelphia office. Persons within the United States who are issued summonses for records located abroad must make "all reasonable efforts" to produce the records. United States v. Hayes, 722 F.2d 723, 725 (11th Cir. 1984) (involving IRS summons for partnership records located abroad). Consistent with that principle, a United States branch of a foreign bank was required to produce documents maintained at the bank's foreign branches. See United States v. Bank of Nova Scotia, 691 F.2d 1384 (11th Cir. 1982) (requiring Miami branch of foreign bank to produce documents maintained at foreign branches), cert. denied, 462 U.S. 1119 (1983). Similarly, an IRS summons for records maintained in Switzerland was enforced. See United States v. Bache Halsey Stuart, Inc., 563 F. Supp. 898 (S.D.N.Y. 1982). Although it appears that the documents sought from [REDACTED] are maintained in London, the authorities discussed above would support an attempt to obtain them by summoning the Philadelphia office of [REDACTED].

Letters rogatory are requests by the courts of one country for assistance from the courts of another country. See IRM (42)320.

Partnership records are subject to summons issued under Code section 7602. See United States v. Allhouse, 622 F.2d 53 (3d Cir. 1980).

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You should be aware that, under routine procedures that have been established for opinions of this type, we have referred this memorandum to the National Office for review. That review, which we expect to be completed within 10 days, might result in modifications to this opinion. We will inform you of the results of the review as soon as we hear from the National Office. In the meantime, the advice contained herein should be considered to be only preliminary. Any questions regarding this opinion should be referred to the undersigned on (516) 688-1737.

DONALD SCHWARTZ
District Counsel

By:

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